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ATTORNEYS AT LAW

July 30, 2007

Ex Parte

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended (47 U.S.C. 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, WC Docket No. 06-109.*

Dear Ms. Dortch:

General Communication Inc. ("GCI") hereby updates its ex parte of June 6, 2007, in light of ACS of Anchorage's ("ACS") June 29, 2007 and July 25, 2007 ex partes.

In its June 29, 2007 ex parte, ACS stated as follows:

- ACS agrees, as a condition of forbearance, to a cap on all regulated interstate access rates at current rate levels, "such that ACS will be unable to increase the price of any individual access service."¹ This applies to both switched and special access services. Notably, this is not just a cap on the average rates that may be charged, but on each specific, individual rate.
- ACS is *not* seeking forbearance from the requirement to file tariffs, *i.e.*, not seeking permissive detariffing, for any common carrier services, but was only seeking forbearance to permit it to file tariffs, including contract tariffs, on one

¹ ACS Ex Parte, WC Docket No. 06-109, at 2 (filed June 29, 2007).

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day's notice.² ACS would continue to be required to file tariffs, including contract tariffs, for all of its common carrier services.

- ACS agrees to receive ICLS payments on a per-line served basis, as CETCs currently do, with the ICLS per line rate frozen at the current per line rate.³ This means that, like CETCs, ACS will now lose support as it loses lines (and gain support as it gains lines). It also ends the "upward spiral" of support as ACS loses access lines.
- ACS agrees to exit the NECA pools.⁴

In its ex parte dated July 25, 2007, ACS further stated:

- ACS clarifies that its request for broadband forbearance does not include TDM-based services, such as DS-1 and DS-3 special access services.
- ACS agrees to specific safeguards against cost-shifting of common costs to its rate-of-return regulated affiliates, including providing information to GCI that will allow GCI to verify compliance.⁵
- ACS agrees that if GCI is using any interstate access service that ACS wishes to discontinue, ACS will leave that service in place and fulfill new orders for that service for GCI at the then-effective rate until GCI chooses to discontinue the service.⁶ This ensures that ACS cannot use forbearance from Part 69 rules to eliminate competitively sensitive access rate elements or to combine existing elements in a way that would require a purchaser to, for example, purchase transport in order to purchase end office switching.

Upon review of these clarifications and conditions, and particularly in light of the now-effective GCI-ACS Global Interconnection Agreement that secures GCI's ability to have access to UNEs at contractually specified rates for the next five years, GCI believes these conditions would substantially address the concerns that GCI raised in its comments and June 6, 2007 ex parte. Provided that these clarifications, limitations, and conditions are expressly made conditions of the requested forbearance, GCI no longer objects to the requested forbearance.⁷

GCI does not endorse ACS's characterizations of the various Anchorage telecommunications markets or arguments therefrom. For example, GCI does not agree that the Commission can properly use GCI's mass market broadband products to establish competition in

² *Id.* at 2.

³ *Id.* at 8.

⁴ *Id.* In its July 25, 2007 Ex Parte, ACS requests forbearance from the "all-or-nothing" requirement with respect to participation in NECA's common line pool. GCI agrees with that request so that ACS can implement this condition without withdrawing its affiliates from the NECA pool. ACS Ex Parte, WC Docket No. 06-109, at 2 (filed July 25, 2007). GCI believes "cost-shifting" safeguards help address concerns of cost misallocation that underlie the "all-or-nothing" rule, as well as the offsetting consideration of the benefits of moving ACS of Anchorage out of rate-of-return regulation.

⁵ ACS Ex Parte, WC Docket No. 06-109, at 2 (filed July 25, 2007).

⁶ *Id.* at 3.

⁷ In its July 25, 2007 Ex Parte, ACS also clarifies that it is not seeking forbearance from all of 47 C.F.R. § 1.773, but only forbearance from 47 C.F.R. § 1.773(iii) on the condition that 47 C.F.R. § 1.773(ii) apply in lieu thereof. This clarification ensures that ACS in Anchorage is subject to the same suspension rules as GCI.

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the enterprise market sufficient to justify forbearance, as ACS appears to suggest in its July 25, 2007 ex parte. However, in light of the fact that through the Global Interconnection Agreement, GCI is assured of access to unbundled loops for the next five years⁸ and through the conditions ACS is precluded from raising the rates for special access channel terminations, and cannot withdraw and interstate access service GCI is purchasing while GCI still desires to purchase that service, GCI will have the ability to provide its own competing enterprise broadband services even to locations where GCI may not have its own loop facilities. This example demonstrates that both the continued assurance of access to UNE loops and the conditions and limitations proposed by ACS are critical to satisfying Section 10's requirements in these markets.

Please contact me if you have any questions.

Sincerely,



John T. Nakahata
Counsel to General Communication, Inc.

⁸ Even after the five-year period, ACS acknowledged that GCI would continue to have access to UNEs subject to the terms of the Memorandum Opinion and Order, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion & Order, 22 FCC Rcd 1958 (2006). *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Opposition of ACS to Motion to Vacate, WC Docket 05-281, at 2, 4 (filed July 19, 2007) (the Order "will continue to provide the framework under which the companies will operate after the parties' agreement expires.").